

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN-PIERRE GAQUERE

Appeal No. 99-2104
Application No. 08/759,983¹

ON BRIEF

Before ABRAMS, STAAB, and BAHR, ***Administrative Patent Judges.***

ABRAMS, ***Administrative Patent Judge.***

DECISION ON APPEAL

¹Application for patent filed December 3, 1996. According to appellant, this application is a continuation of Application No. 08/332,461, filed October 31, 1994, now U.S. Patent No. 5,581,867 issued December 10, 1996; which is a continuation of Application No. 07/920,441, filed October 13, 1992, now abandoned; which is the national stage Application of PCT/FR91/01025, filed December 17, 1991.

This is an appeal from the decision of the examiner finally rejecting claims 15-18, 20-22, 29 and 30, which constitute all of the claims remaining of record in the application.

The appellant's invention is directed to a blind rivet. The claims on appeal have been reproduced in an appendix to the Brief (Paper No. 12).

THE REFERENCE

The sole reference relied upon by the examiner to support the final rejection is:

La Torre	3,460,429	Aug.
12, 1969		

THE REJECTIONS

Claims 15, 16, 18, 20-22, 29 and 30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by La Torre.

Claim 17 stands rejected under 35 U.S.C. § 103 as being unpatentable over La Torre.

OPINION

Although we have not reiterated them here, in reaching our decision on the issues raised in this appeal, we have carefully assessed the claims, the prior art applied against the claims, and the respective views of the examiner and the appellant as set forth in the Answer and the Brief.

The Rejection Under 35 U.S.C. § 102(b)

Anticipation is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See ***In re Paulsen***, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994) and ***In re Spada***, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

The appellant's invention is a blind rivet comprising a tubular sleeve that is provided with an internal bore and a mandrel positioned within the bore. According to claim 29, the tubular sleeve is provided with a stop means arranged on the interior of the bore adjacent its preformed head. The claim then goes on to specify that the mandrel has first and second portions, "a shoulder forming the end of said first portion, said shoulder being cooperable with said stop means during stretching of said sleeve," and "at least one rupture groove formed in said shank of said mandrel and positioned in said first portion of said shank between said shoulder and said head of said mandrel."

La Torre discloses a blind rivet comprising a tubular sleeve (10) provided with a longitudinal bore, and a mandrel (12) having a head (34) and a shank (36, 38, 42) housed in the bore. While some of the language of claim 29 can be read upon the La Torre rivet, we do not agree with the examiner that all of it can, notwithstanding the examiner's reference to the breadth of the claims. This is based upon the fact that, in our view, the language of the claim cannot be read as broadly as the examiner's interpretation, because of certain precise relationships that are established therein. In this regard, we focus upon two requirements of the claim. First, the mandrel has first and second portions and the "shoulder" is described as "forming the end of said first portion." Second, there is at least one rupture groove and it must be "positioned in said first portion of said shank between said shoulder and said head of said mandrel" (emphasis added). According to the patentee, there is only one rupture groove and that is designated by the numeral 40. Since claim 29 requires that the rupture groove be located between the shoulder and the head of the mandrel, even the most charitable interpretation of the La Torre device results in the shoulder being either the leftmost

(as shown) beveled portion adjacent to rupture groove 40 or the beveled portion immediately adjacent to threaded portion 32. But neither of these shoulders is capable of "cooperating" in any way with inward projection 30 of the sleeve during stretching of the mandrel, no matter how broadly the quoted term is interpreted.

Considering the situation from another perspective, the guidance provided by the appellant's specification establishes that the ends of the first and second portions are defined by the rupture groove, and the claim requires that the shoulder form the end of the first portion. This means that the "shoulder" in

La Torre must be the beveled portion immediately to the right (as shown) of rupture groove 40. However, in such case the rupture groove is not located "between" the shoulder and the head, as also is required by the claim.

In our view, neither of the constructions upon which the rejection appears to have been based are tenable. Further in this regard, considering the groove described by La Torre as "trapping groove 46" to be a rupture groove on the basis that a rupture could occur if the shank were put under a large enough

axial load, which is the examiner's position on page 4 of the Answer, this position is an inaccurate and improper interpretation of the parts of the reference device and its operation. Likewise, considering locking projection 30 to be the required stop means also is flawed reasoning.

We therefore conclude that the subject matter recited in claim 29 is not anticipated by La Torre, and we will not sustain the rejection of this claim or, it follows, of claims 15, 16, 18, 20-22 and 30, which depend therefrom.

The Rejection Under 35 U.S.C. § 103

Claim 17 has been rejected as being unpatentable over La Torre. We have explained above that the La Torre rivet structure fails to disclose the subject matter required by claim 29, from which claim 17 ultimately depends. Considering this reference in the context of Section 103² leads us to conclude that it fails to establish a *prima facie* case of

²A *prima facie* case of obviousness is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art. See, for example ***In re Bell***, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993).

obviousness with regard to the subject matter recited in claim
17, and we will not sustain the rejection.

SUMMARY

Neither rejection is sustained.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JENNIFER D. BAHR)	
Administrative Patent Judge)	

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